

III. Third Rejection Under 35 U.S.C. § 103

Summary of the Rejection

The Examiner rejected claims 74-76 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Pat. No. 5,891,035). Further, the Examiner rejected claims 77 and 78 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Pat. No. 5,891,035) in view of Official Notice. Applicants respectfully traverse the rejection.

Claim 74 and the Claims Depending Therefrom

Claim 74 recites:

A system for providing operational protocols to a medical diagnostic station or institution, the system comprising:

at least one storage device for storing data defining a protocol, the protocol including data for controlling operation of the diagnostic station;

a messaging module in the diagnostic station or the institution for formulating messages containing data descriptive of a desired protocol, the descriptive data including an exemplary image obtainable via the protocol; and

communications circuitry for establishing a network link between the diagnostic station or institution and a remote protocol provider, for transmitting data descriptive of the desired protocol, and for receiving a reply from the remote protocol provider.

The rejection fails because the reference fails to disclose all of the subject matter recited in claim 74. In the rejection, the Examiner admitted that the Wood et al. reference does not expressly disclose the recited features of “the descriptive data including an exemplary image obtainable via the protocol,” as recited in claim 74. The Examiner asserted that the Wood et al. reference discloses exemplary images obtainable *presumably* via the protocol. However, as discussed above, the Wood et al. reference is devoid of any suggestion of the recited feature.

The Examiner cited specific passages within the Wood et al. reference. These passages simply relate to the accessing an image library 400 to find a type of pathology or condition that relates to a patient's condition. Wood et al, Col. 10, lines 8-15. These images are accessed via the browser to aid in making diagnoses, and are not *exemplary images obtainable via the protocol*. Wood et al., col. 1, lines 39-41.

Furthermore, here again, Applicants respectfully request the Examiner to provide support under M.P.E.P. § 2144.03 for the Examiner's apparent assertion of what is "well known in the art." In the rejection, the Examiner has asserted that various recited features are obvious because they are *presumed* and has taken Official Notice of facts outside of the record for others that the Examiner apparently believes are capable of demonstration as being "well-known" in the art. Therefore, in accordance with M.P.E.P. § 2144.03, Applicants hereby seasonably traverse and challenge the Examiner's use of Official Notice. Specifically, Applicants respectfully request that the Examiner produce evidence in support of the Examiner's position as soon as practicable during prosecution and that the Examiner add a reference to the rejection in the next Official Action.

Accordingly, the cited reference fails to disclose or suggest *all* of the recited features of the instant claim. Therefore, independent claim 74 and its respective dependent claims 75-78 are believed to be clearly patentable over Wood et al.

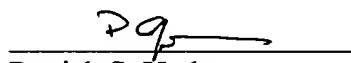
Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims 59-64 and 66-78. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Attached hereto is a marked-up version of the changes made to the drawings and claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

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Respectfully submitted,


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